



DONALD L. WOLFE, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

March 9, 2006

IN REPLY PLEASE

REFER TO FILE: **C-1**

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**APPROVAL OF NEGOTIATED TERMINATION OF CONTRACT
PROJECT ID NO. FCC0000894
PROJECT NO. 513 LINE C, PROJECT NO. 513 LINE A, AND
LOS ANGELES PROJECT NO. 5241
OCEAN OUTLET REPAIRS
SUPERVISORIAL DISTRICT 4
3 VOTES**

**IT IS RECOMMENDED THAT YOUR BOARD ACTING AS THE GOVERNING BODY
OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT:**

Approve the enclosed Agreement to terminate the construction contract with Garcia Juarez Construction, Inc., (Garcia Juarez) for Project No. 513 Line C, Project No. 513 Line A, and Los Angeles Project No. 5241 Ocean Outlet Repairs, Project ID No. FCC0000894, whereby the District will pay Garcia Juarez \$129,111.13 for the work performed and materials purchased to date and authorize the Director of Public Works, or his designee, to sign and implement the termination Agreement.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On July 5, 2005, your Board awarded a contract in the amount of \$787,320 to Garcia Juarez for the repair and construction of protection facilities for reinforced concrete pipe and reinforced concrete box storm drains at three ocean outlets.

During construction, the contractor claimed the work could not be accomplished because of the impact of ocean waves and requested a substantial change order to proceed. Although we contend the project could be completed without the additional requested change, we acknowledge that the plans and specifications could be revised to clarify the nature of the work. We believe it is in the best interest of the County to terminate this contract and obtain competitive bids with revised plans and specifications. Therefore, we recommend that your Board terminate the contract with Garcia Juarez in accordance with Subsection 6-5, Termination of Contract, of the contract specifications. The project will be readvertised when revised plans and specifications are available.

Garcia Juarez has completed a portion of the work. Additionally, they purchased steel and other materials for the project. We request authorization to pay Garcia Juarez \$129,111.13 for the work completed and the steel and other materials, which will be furnished to the County. When the project is readvertised, the steel and other materials will be provided to the contractor awarded the contract.

Implementation of Strategic Plan Goals

This action is consistent with the County Strategic Plan Goal of Fiscal Responsibility since it will result in obtaining competitive bids for the complete repair of the subject ocean outlets.

FISCAL IMPACT/FINANCING

The contractor has incurred expenses that we believe are reasonably valued at \$129,111.13. The costs for administratively terminating this project will be minimal.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The contract specifications provide for the termination of the contract by your Board if such action is in the best interest of the County.

ENVIRONMENTAL DOCUMENTATION

This action has no environmental impact.

The Honorable Board of Supervisors
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IMPACT ON CURRENT SERVICES (OR PROJECTS)

The recommended action will not have a significant impact on the community.

CONCLUSION

Please return one adopted copy of this letter to Public Works.

Respectfully submitted,

DONALD L. WOLFE
Director of Public Works

JFG:tn

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Enc.

cc: Chief Administrative Office
County Counsel
Office of Affirmative Action Compliance

**CONTRACT TERMINATION AGREEMENT FOR PROJECT ID NO. FCC0000894
WAIVER AND RELEASE OF ALL CLAIMS**

This Contract Termination Agreement ("AGREEMENT") is made and entered into as of the ____ day of _____, 20__, by and between the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, ("DISTRICT"), on the one hand, and GARCIA JUAREZ CONSTRUCTION, INC., a California corporation, and JIM JACKSON (individually and collectively referred to as "CONTRACTOR"), on the other hand. The DISTRICT and CONTRACTOR may be referred to collectively herein as "PARTIES."

RECITALS

A. The PARTIES entered into a contract ("CONTRACT") on July 5, 2005, for the repair of a concrete reinforced storm drain at three ocean outlets for the project titled "Project No. 513 Line C, Project No. 513 Line A, and Los Angeles Project No. 5241 Ocean Outlet Repairs" in the vicinity of Marina del Rey under Project ID No. FCC0000894 ("PROJECT").

B. The CONTRACT required the CONTRACTOR to complete the PROJECT satisfactorily within a specified period of time. The DISTRICT, subject to the CONTRACTOR'S satisfactory performance and completion of all the CONTRACT terms and conditions, agreed to pay the CONTRACTOR a total sum of \$787,320.

C. The CONTRACTOR commenced work on the PROJECT on August 22, 2005. In preparation for the work, the CONTRACTOR ordered and received certain necessary materials. The CONTRACTOR claims that it is unable to complete the work as designed and asserts that it will not proceed without a change order authorizing significant additional work and monetary compensation.

D. The DISTRICT asserts that the CONTRACTOR could perform the work as designed and that the changes requested by the CONTRACTOR are not necessary.

E. The PARTIES have agreed that to resolve their disputes and avoid potential claims and/or litigation, it is reasonable to agree to a termination of the CONTRACT, subject to the terms and conditions set forth below.

NOW, THEREFORE, in order to compromise and settle existing and potential claims between the PARTIES, which relate to or arise out of the CONTRACT and the recitals above, the PARTIES hereby agree as follows:

1. DISTRICT will pay CONTRACTOR \$129,111.13 as compensation for the work completed, the materials purchased for this PROJECT (which materials are to be provided to the DISTRICT as provided below), and for any and all other costs or expenses incurred or other rights or claims of CONTRACTOR in connection with the CONTRACT and PROJECT.

2. CONTRACTOR shall deliver to the DISTRICT as the DISTRICT's property the following materials that CONTRACTOR purchased for the PROJECT:

- a) MMFX Rebar as referenced in Invoice #53268 from R. R. Leonard Co.
- b) Reinforcing Steel as referenced in Invoice #53090 from R. R. Leonard Co.
- c) Reinforcing Steel as referenced in Invoice #53394 from R. R. Leonard Co.
- d) Railing for Line C as referenced in Invoice #34232 from Palomo S Steel.

3. Except as otherwise provided for in this AGREEMENT, CONTRACTOR and its officers, directors, owners, employees and agents hereby forever relieve, release, waive, and discharge DISTRICT and COUNTY OF LOS ANGELES and their respective officers, agents, and employees from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, costs, interest, expenses (including but not limited to experts' and attorneys' fees), damages, actions, and causes of action of whatsoever kind or nature, whether known or unknown, suspected or unsuspected, present or potential, foreseen or unforeseen, based on, arising out of, or in any way connected with CONTRACT and PROJECT and/or with any of the recitals set forth above.

4. Except as otherwise provided for in this AGREEMENT, DISTRICT and its directors, officers, employees, and agents hereby forever relieve, release, waive and discharge CONTRACTOR and any their respective officers, agents, and employees from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, costs, interest, expenses (including but not limited to experts' and attorneys' fees), damages, actions, and causes of action of whatsoever kind or nature, whether known or unknown, suspected or unsuspected, present or potential, foreseen or unforeseen, based on, arising out of, or in any way connected with CONTRACT and PROJECT and/or with any of the recitals set forth above.

5. Except as otherwise provided for in this AGREEMENT, the foregoing release is intended to extend to all claims relating to the CONTRACT and PROJECT, and the CONTRACTOR expressly waives all rights that it may have under California Civil Code Section 1542, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

6. As a specific exception to the waivers and releases of claims provided for in paragraphs 3, 4, and 5 above, the PARTIES both reserve claims for indemnity against each other in connection with third party claims for personal injury or property damage arising from or relating to the CONTRACT and/or PROJECT.

7. Notwithstanding the foregoing, to the extent that any stop notices relating to this CONTRACT or PROJECT are served on the DISTRICT before all or any part of the monies to be paid to the CONTRACTOR have been paid by DISTRICT pursuant to this

AGREEMENT or the CONTRACT, DISTRICT reserves the right to withhold from such payments to CONTRACTOR one hundred and twenty-five percent of the total monetary amount of such stop notices in accordance with applicable law.

8. This AGREEMENT is binding upon and inures to the benefit of the parties hereto and their respective successors, assigns, and legal representatives. CONTRACTOR represents and warrants that it has not heretofore assigned or transferred any claim, demand, liability, or cause of action which is the subject of this AGREEMENT.

9. Each party hereto represents and warrants that it is authorized to enter into this AGREEMENT.

10. Each party hereto acknowledges that this AGREEMENT affects the settlement of claims, which have been and are denied and contested, and nothing herein is intended to constitute an admission of liability to any party hereto.

11. Each party hereto acknowledges having read this AGREEMENT and fully understood its provisions and that no other representation or promise has been made to induce said party to enter into this AGREEMENT.

12. This AGREEMENT embodies the entire agreement and understanding between the parties hereto relating to the subject matter contained herein and supersedes all prior agreements and understandings between them with respect thereto. There are no agreements, representations, warranties, or statements, whether oral or in writing, with respect to the subject matter of this AGREEMENT except as expressly set forth herein.

13. This AGREEMENT may be amended or modified only by a writing signed by the party against whom enforcement is sought.

14. This AGREEMENT may be executed in counterparts, all of which taken together shall constitute one agreement binding on all the parties hereto.

15. This AGREEMENT is made and entered into in the State of California and shall be interpreted and enforced under the laws of the State of California. Whenever possible, each provision of this AGREEMENT shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this AGREEMENT shall be prohibited or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this AGREEMENT.

By _____
JIM JACKSON

GARCIA JUAREZ CONSTRUCTION, INC., a
California Corporation

APPROVED AS TO FORM:

RAYMOND G. FORTNER JR.
County Counsel

By _____
JIM JACKSON

LOS ANGELES COUNTY FLOOD
CONTROL DISTRICT

By _____
Deputy

By _____
Deputy Director of Public Works

JFG:lgm

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